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**Federal Communications Commission
Commission's Secretary
Office of the Secretary
Attention: CGB Room 3-B431
445 12th Street, SW
Washington DC 20554**

057 10 10

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:)
)
) CSR _____
Alliance Autoplaza, Inc. d/b/a)
Repo Outlet of West Palm)
)
Petition for Exemption of)
Closed Captioning Requirements)

**PETITION FOR EXEMPTION OF CLOSED
CAPTIONING REQUIREMENTS**

Alliance Autoplaza, Inc. d/b/a Repo Outlet of West Palm ("Alliance"), by counsel, hereby petitions for an exemption of the closed captioning requirements of Section 79.1 of the Commission's rules.¹

Background. Section 713 of the Communication Act of 1934, as amended, ("the Act"), Video Programming Accessibility, was added to the Act by Section 305 of the Telecommunications Act of 1996.² In enacting Section 713, Congress recognized that, in certain situations, the costs of captioning might impose an "undue burden" on video programming providers or owners, and it authorized the Commission to adopt appropriate exemptions.³ Congress defined "undue burden" to mean "significant difficulty or expense."⁴ (In determining if the closed captioning requirements will impose an undue economic burden, factors to be considered are (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.)⁵

Section 79.1(d)(8) provides an exemption for locally produced and distributed non-news

¹ 47 C.F.R. §79.1

² 47 U.S.C. §613

³ 47 U.S.C. §613(d)(1)

⁴ 47 U.S.C. §613(e)

⁵ *Id.* See also 47 C.F.R. §79.1(f)

programming with no repeat value and of local interest.⁶

Alliance is a local area car dealer. The commercials are locally produced and market and client specific. For example, a typical commercial features specific cars held in inventory by Alliance at its one location in Palm Beach County. A typical commercial is about 28 minutes in length and is aired on one or two television stations in the same DMA. Alliance contracts with the local television stations to air the commercials. Each commercial receives a limited play; it is broadcast only about eight times. As the commercials are inventory specific, Alliance must withdraw the commercials due to constant inventory change or may be subject, under state law, to revocation of their license for deceptive advertising⁷. Thus, approximately every week a new commercial has to be prepared.

Alliance must operate on very strict production schedules. Alliance must have a new program-length commercial created each 7 to 10 days in order to replace sold inventory with new cars, edit the show, make a master and all dubs and get the show out by Thursday for broadcast on Saturday and/or Sunday. The production company estimates that it takes approximately 4 days to produce, edit and prepare the masters for each commercial. Closed captioning must be sent out to a separate entity upon completion of the master. The production company estimates that this process adds another three to five days to the completion time. This will make it difficult for Alliance to meet its deadline for airing, which, as discussed above, must be observed to comply with state law. This additionally will create significant expense adding approximately 35 percent to the production cost.

Discussion. Advertising is generally regarded as ancillary to the main programming content, which is the focus of Section 713. In this regard, the statute does not provide for captions on all televised material, nor does it specifically address advertising. The Commission recognized that in some contexts advertising should be treated separately from programming and thus not subject to the captioning obligations⁸. The Commission, however, concluded that program-length commercials should be subject to captioning requirements, reasoning that “such programs are generally pre-

⁶ 47 C.F.R. §79.1(d)(8)

⁷ F.S. §320.27

⁸ *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rci3272,3345 (1977). (“Closed Captioning Order”).

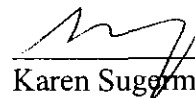
recorded, generally distributed nationwide, and are formatted to resemble traditional television.”⁹ In the case of Alliance commercials, while the programs are pre-recorded, to avoid being subject to revocation of their license for deceptive and misleading advertising under applicable state law, new commercials must be produced every 7 to 10 days, leaving little time for closed captioning. Alliance’s commercials are not distributed nationwide. They are made for local-market customers and are aired only in that DMA and then only for a very limited period of time. Finally, Alliance’s commercials are not formatted to resemble traditional television programming. Rather, they are merely an inventory of available cars offered for sale in a particular market.

Section 79.1(d)(8) provides an exemption for locally produced and distributed non-news programming with no repeat value and of local interest.¹⁰ The commercials that Alliance produces are non-news programming specifically prepared for the particular market in which they are broadcast. Because they must withdraw advertising after a car is sold, the commercials have no repeat value.

Requiring Alliance to caption its program length commercials would place an undue burden on Alliance, and cause it to incur significant difficulty and expense. The programming in question is advertising which does not merit the same public interest considerations as news or entertainment programming.

WHEREFORE, the Petitioner respectfully requests that it be granted an exemption from closed captioning in accordance with the foregoing.

Respectfully submitted,



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⁹ *Id.* At 3346.

¹⁰ 47 C.F.R. §79.1(d)(8).